



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/146487

PRELIMINARY RECITALS

Pursuant to a petition filed January 10, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on February 06, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Milwaukee Enrollment Services (the agency) correctly determined Petitioner's FoodShare benefits, effective January 1, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Alma Lezama, HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner had previously been receiving Transitional FoodShare Benefits, which ended effective January 1, 2013. (Testimony of Ms. Lezama)
3. On December 3, 2012, the agency sent Petitioner a notice indicating that effective January 1, 2013, her FoodShare benefit would be reduced from \$367.00 per month to \$16.00 per month. (Exhibit 5)

4. The agency based its income calculation upon two paystubs submitted by Petitioner on October 25, 2012. The pay stubs were dated September 7, 2012 and September 21, 2012. (Exhibit 8)
5. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 10, 2013.
6. Petitioner's assistance group/household size is 2 . (Testimony of Petitioner)
7. Petitioner was paying \$575.00 per month in rent, and was obligated to pay utilities. (Petitioner's testimony; Exhibits 3 and 4)
8. Petitioner's son receives SSDI payments in the amount of \$698.00 per months and he receives State SSI payments in the amount of \$83.78 per month for a total of \$1254.78 in payments. (Testimony of Petitioner)
9. Petitioner received Unemployment Insurance Benefits (UI Benefits) during the time in question, in the amount of \$116.00 per week. (Testimony of Petitioner; Exhibit 7)

DISCUSSION

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has a member over age 60. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FSH § 4.3.1.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH §4.1.1.*

Once a household passes the gross income test the following deductions are applied (*FSH, at § 4.6*):

- (1) a standard deduction –

This was is \$147 per month for a household of 1 during the time in question, but effective October 1, 2012, was changed to \$149 per month, *7 CFR § 273.9(d)(1)*:

- (2) an earned income deduction - which equals 20% of the household's total earned income, *7 CFR § 273.9(d)(2)*;
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;
- (4) dependent care deduction for child care expenses, *7 CFR § 273.9(d)(4)*; and
- (5) shelter and utility expenses deduction the deduction is equal to the excess expense above 50% of net income remaining after other deductions. *7 CFR § 273.9(d)(5).*

During the time in question, the heating standard utility allowance (HSUA) was \$444, but Effective October 1, 2012, it was changed to \$442 per month.

During the time in question there was a cap of \$459.00 on the shelter cost deduction, *unless* a household has an elderly, blind or disabled member. Effective October 1, 2012, it was changed for \$469 per month.

FSH, §§ 4.6.7.1 and 8.1.3.

The term 'disabled' is a term with a definition as to the FoodShare program:

3.8.1.1 EBD Introduction

An elderly individual is a food unit member age 60 or older.

A disabled individual is a food unit member who receives disability or blindness benefits from any of these programs: [SSA](#), [MA](#), [SSI](#) or SSI related MA, Railroad Retirement Board ([RRB](#)).
FSH, §3.8.1.1.

Petitioner disagrees with the agency's calculation of her earned income. The agency based its calculation of Petitioner's income upon two check stubs dated September 7, 2012 and September 21, 2012, that Petitioner submitted on October 25, 2012. Unfortunately, the exhibit containing copies of the pay checks are extremely difficult to read and the check for September 21, 2012 is largely illegible.

Consequently, if Petitioner's income for the January 2013 FoodShare budget is estimated, based upon her prior income, the best information in the record is the September 7, 2012 pay check and the December 14, 2012 pay check that is listed in Exhibit 6.

Looking at the September 7, 2012 paycheck, we have 31.25 hours worked, at \$10.50 per hour. Looking at the December 14, 2012 paycheck, we have 8.50 hours worked at \$10.50 per hour. This results in the following calculation:

31.25 hours + 8.50 hours = 39.75 hours ÷ 2 pay periods = 19.875 hours worked per pay period.
 19.875 hours x \$10.50 per hour = \$208.69 per pay period
 \$208.69 per pay period x 2.15 average bi-weekly pay period = \$448.69 per month

Thus, Petitioner's estimated household income for January 2013 works out to be:

\$448.69 earned income + \$1,254.78 unearned income from her son = \$1703.47

Petitioner asserted that her son's SSDI payments were reduced, based upon her income, but there is no documentation of this in the record.

The foregoing gross income calculation leads to the following net income calculation, effective January 1, 2013:

Gross Income	\$1703.47	Rent	\$575.00
Earned Income Deduction	-\$ 89.74	HSU	\$442.00
Standard Deduction	-\$149.00	50% Net income	-\$732.37
No Medical Expenses exceeding \$35			
No Dependent Care Deduction		Excess Shelter Expense	\$284.63
Net Income	\$1464.73		
Excess Shelter Expense	-\$284.63		
Net Income	\$1180.10		

Individuals, in a household of two, with a net income of \$1180.10 qualify for a FoodShare allotment of \$16.00 per month. *FSH §8.1.2.*

It should be noted the Petitioner indicated that her employer had been cutting her hours. When that occurs, Petitioner needs to notify the agency and provide proof of such changes.

CONCLUSIONS OF LAW

The agency correctly determined Petitioner's FoodShare allotment effective January 1, 2013.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

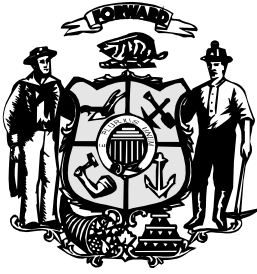
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of February, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 14, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability